REMARKS

Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. New claims 18-25 are presented. Applicant respectfully requests reconsideration of this application.

Applicant respectfully traverses the rejections of claim 1 under 35 U.S.C. §102(B) as being anticipated by U.S. Patent No. 5,748,748 to *Fischer, et al.* (hereinafter "*Fischer*"). There is no anticipation because *Fischer* fails to disclose selecting one of at least two modes of noise attenuation signal generation based on engine data. *Fischer,* rather, discloses an operating condition determination unit 18 which determines a current operating condition of an engine 16 by reading a speed sensor 20 and a throttle valve sensor 22. The operating detection unit 18 produces an operating condition signal BZ based on the output from the sensors 20 and 22. A selector device 36 reads the operating condition signal BZ and selects an oscillation pattern SM from a memory device 38 to cancel the sound generated by the engine 16. Selecting an oscillation pattern to cancel sound is different from selection of one of at least two modes of noise attenuation.

The Examiner further argues that *Fischer* shows the selection of one of at least two modes of noise attenuation signal by referencing column 3, line 43 to column 4, line 28. However, the referenced passage discloses only changing an undesirable oscillation into a desirable oscillation as a function of an operating condition of the vehicle. There is only one mode of noise attenuation disclosed for the system, i.e., the sports car mode. Therefore, *Fischer* provides for the noises heard by a passenger of a small car to be changed to sound like a sports car. Changing noises of a vehicle to make it sound like a sports car is not the same as selecting one of at least two modes of noise attenuation

signal generation based on engine data. Accordingly, there is no anticipation. As such, claims 2-7 are likewise allowable.

Claim 8 is also rejected under 35 U.S.C. §102(B) as being anticipated by *Fischer.* In relation to claim 1, there is no disclosure in the cited portions of *Fischer* showing a selection of one of at least two modes of noise attenuation signal generation based on a comparison of engine speed data and engine load data with data stored in a memory unit. As stated, selection of an oscillation pattern to cancel unwanted sound is not the same as selecting one of at least two driving modes. For this reason, claim 8 and all claims depending therefrom are in condition for allowance.

Alternatively, claim 8 also requires that the speaker be disposed adjacent to the air induction body. This element is not disclosed by *Fisher.* The examiner refers to Figures 1, 3, and 5 of *Fischer* to show that the speaker is adjacent the air induction body. Figures 1, 3, and 5 clearly show the loudspeaker 44 of *Fischer* located in the rear of the vehicle compartment. The rear of the vehicle compartment is not adjacent to the air induction system 16 of the vehicle 14. For the reasons listed above, claim 8 and its dependent claims are respectfully submitted as being allowable.

Claim 13 is also rejected based upon 35 U.S.C. §102(B) as being anticipated by *Fischer.* For identical reasons as those identified above with reference to claims 1 and 8, Claim 13 is in condition for allowance. Dependent claims 14-17 depend from claim 13 and are therefore likewise allowable.

New dependent claim 18 requires that the two modes of noise attenuation comprises a first driving mode and a second driving mode and that the first driving mode provide a lower level of noise attenuation than the second driving mode. New claim 19

requires that the control unit select the first driving mode in response to high engine speeds and loads and select the second driving mode in response to low engine speeds and loads. As *Fischer* does not disclose separate and distinct modes of operation of noise attenuation signal generation, claims 18-19 are respectfully submitted as allowable.

New dependent claim 20 requires that the first driving mode be defined as a sport-driving mode and the second driving mode be defined as a normal driving mode. New claim 21 requires that the sport-driving mode provide a lower level of noise attention than the normal driving mode. New claim 22 requires that the control unit select the sport-driving mode in response to high engine speeds and loads and select the normal driving mode in response to low engine speeds and loads. These features are also not shown by *Fischer.*

New independent claim 23 requires selecting one of at least two modes of noise attenuation signal generation based upon a "comparison of said engine data with an amount of time said engine data exceeds a threshold value of speed and load." This feature is not shown by *Fischer.*

New independent claim 24 requires selecting one of at least two driving modes based on "a comparison of said engine speed data and said engine load data with an amount of time said engine speed data and said engine load data exceeds a threshold value of speed and load. *Fischer* fails to show this feature.

For the reasons set forth above, all claims are respectfully submitted as allowable. Applicant respectfully submits that this case is in condition for allowance.

The Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that the enclosed Response is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on September 6, 2005.

Theresa M. Palmateer

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